Legal Education & Practice

Super-gentrification of the legal profession

by Richard Moorhead

Richard Moorhead

Both critical and functional theories of the legal profession suggest that controlling entry is a defining feature of professionalism. Indeed, Abel has suggested ('The Decline of Professionalism?' (1986) 49 *Modern Law Review*, p. 1) that the solicitors' profession has formally ceded such control to the universities and thus relinquished its claim to being a true profession. This article describes the economic and structural barriers which control entry into the profession. It will be argued that the profession still demonstrably controls entry and does so in a way that discriminates on the basis of ethnicity, class and gender. Several factors permeate vocational education and training contracts encouraging several cycles of gentrification of the student cohort. This process of super-gentrification has exacerbated a narrowing of the professional base and needs to be addressed if an unequal profession is to regain some balance.

SELF DISCRIMINATION

Student decisions to exclude themselves are contingent on their own assessments of financial risk and reward. Students with parents or relatives in the profession, or from a particular class background are more likely to choose law as a career.

THE POWER OF DEBT

The main source of professional recruits is undergraduate law students. Although they generally come from a socially and educationally advantaged background, their backgrounds do not appear to differ from students generally (see Shiner, Michael and Tim Newburn: *Entry into the Legal Professions: the Law Student Cohort Study, Year 3* (Law Society, 1995), pp. 16–28.)

The next source of recruits, often the ones particularly favoured by law firms, are non-law graduates who convert via the Common Professional Exam (CPE). CPE students are more likely to be white, male, from independent or grammar schools and to have parents who have degrees (Shiner and Newburn, op. cit. p. 23). One reason for this is economic. Students taking the course have to fund a further year of study and find fees of about £3,000. Clearly, students with wealthy parents are more able to take up such places. The cost of the course also gives the profession a position of influence, particularly in the virtual absence of local authority funding. CPE students will look to future employers for funding of their studies or, at the very least, a guarantee of employment when their studies are completed. Recruitment decisions by such employers will crucially determine the make-up of those proceeding to the CPE.

The next stage of training is the Legal Practice Course. From an estimated 12,000 law and CPE graduates, about 8,000 places are offered. The costs of this course are significant: around £5,000 plus a year's maintenance costs if full-time. This is a major reason for students deciding not to apply for, or take up offers of, an LPC place. Again, the securing of a training contract (of which there have been about 4,200 per year in recent years) will affect this decision, because of direct funding by law firms or the promise of a salary and qualification as a solicitor, if they manage to pass the exams. Again, parental funding is also a crucial source of income for LPC students.

Figures for debt illustrate the problem and the marked differences between groups of students. A survey looking at students and trainee solicitors estimated that more than one in eight had debts in excess of £10,000, with some having debts of £16,000 (Richard L Moorhead: *Protecting whom? The Impact of the Minimum Salary – a survey into salary and debt levels of trainees and LPC students* (unpublished, 1997)). The average student debt was about £4,500. Conversely, one in four students and trainees had no debts at all. Such students are more likely to come from more privileged backgrounds (Shiner and Newburn, op. cit. p. 74).

THE RISK FACTOR

Recent years have seen the recruitment market for trainees, in terms of the number of training contracts, remain fairly steady. Set against this, the marked increase in the number of available vocational places coupled with initially high levels of demand from students created a recruitment crisis by ensuring a significant mismatch between the number of LPC graduates and the number of training contracts.

Far from widening access to the profession, the increased number of vocational places increased the risks to LPC students because more of them were competing for the same number of jobs. This in turn appears to have encouraged students to exclude themselves from the profession: demand for CPE and LPC places has reduced markedly (by about 10% a year) for the past three years. Student decisions to exclude themselves are contingent on their own assessments of financial risk and reward. Cultural factors are also at work. Certain types of student (i.e. those with parents or relatives in the profession, or from a particular class background) are more likely to choose law as a career. There are also indications that students deselect themselves from the profession on the basis that they are unlikely to get on because of their social class (Shiner and Newburn, op. cit. p. 41).

Debt, the costs of the LPC, and the oversupply of LPC places have

exacerbated the economic risks for would-be LPC students and further narrowed the base of students willing to take on the risk. Employers and more wealthy parents are crucial determinants of the composition of the future profession, as are student images of the profession and their expectation of success within it. Any comfort that might be taken from the market apparently righting itself and allowing a stronger match between the number of training contracts and the number of LPC places must be strongly tempered by the attrition of students from less wealthy backgrounds which has enabled this.

THE OLD STORY

Oxbridge graduates were favoured. Women, in spite of the equality of numbers entering the profession, still found it harder than men to get training contracts. However the strongest barriers were for applicants from ethnic minorities and those from less privileged backgrounds.

THE TRAINING CONTRACT

The most crucial factor in a student's entry into the profession is their ability to secure a training contract. Either through direct funding of fees and maintenance, or through the firm offer of a two-year job and the prize of qualification as a solicitor, the economic risks of embarking on the LPC are mitigated and there is some level of predictable benefit. Decisions to recruit trainee solicitors are thus of double significance: they determine those who can actually become solicitors by securing a training contract and, for those who have not secured a training contract prior to taking the course, the risks and preferences of the recruitment market determine who is willing to try and gain entry.

Evidence in relation to problems with actual recruitment by the profession is damning (Shiner and Newburn, op. cit. p. 92). Even when controlling for academic performance, family connections with the profession and work experience (the latter two factors in particular being potentially discriminatory in any event), graduates from new universities were disadvantaged. Oxbridge graduates were favoured. Women, in spite of the equality of numbers entering the profession, still found it harder than men to get training contracts. However the strongest barriers were for applicants from ethnic minorities and those from less privileged backgrounds.

A further finesse on the profession's control of entry is its treatment of trainee salaries. Evidence suggests that differences in trainee salary may be affected by gender and ethnic group (Moorhead, op. cit. and Nick Armstrong and Richard Moorhead: 'Bare Minimum' [1997] *New Law Journal*, pp. 487, 501). Women and ethnic minority trainees appear to be more likely to be on lower salaries and more likely to be on or below the Law Society's minimum salary. Thus even those that secure entry do so on lower wages and with the expectation that salary differences and promotion problems will increase as they progress (see, for example, Judith Sidaway, 'Salary Lottery' (1997) 94/27 *Gazette*, pp. 16–17; and Eleni Skordaki: 'Glass slippers and glass ceilings: women in the legal profession' (1996) 3 *International Journal of the Legal Profession*, p. 7). The risks for such students are higher and the rewards lower.

The professions, choosing from a pool of students which is already gentrified by cost, risk and debt problems, further filters candidates by selecting for the profession students who bear the characteristics most like the profession of the past: the effect is one of 'super gentrification'. The process occurs throughout the pre-training contract stages of education and is itself strengthened by students' perceptions and experiences of the profession and its recruitment decisions. Signals that the profession sends out about itself, as well as its actual recruitment decisions, have an effect at all stages of the process. Control of entry is thus formal (solicitors' firms individually decide who gets training contracts) and informal (those decisions influence the choices of students considering the vocational stages of training).

SOME CONCLUSIONS

The structure of the training market, an over-supply of costly training courses, mainly studied full-time, and funded by trainees' own commercial debt, parental support and financial assistance from some firms has contributed to a narrowing in the nature and social background of the student cohort. The professions' recruitment decisions impact critically on student decisions as to the risks and rewards offered by the legal profession. The combined effect is a market structured very effectively to narrow the social background of its new entrants.

The blame for some of these problems can be placed most clearly at the feet of the profession. Recruitment practices are a major factor. It remains to be seen whether the Law Society's requirements for codes of practice and voluntary monitoring of targets for equal opportunities will have any effect.

Other opportunities may be found for reducing the structural problems. One option is to abandon the training contract as a pre-cursor to qualification, possibly with a lengthened LPC course. Successful graduates at least get the qualification of 'solicitor' and can seek work as such. This might make matters worse by increasing the costs of the course itself and shifting the problem from recruitment of trainees to recruitment of assistant solicitors. It is a solution which suggests a market cure when in fact the market appears to constitute a central problem.

SUPER GENTRY

The professions, choosing from a pool of students which is already gentrified by cost, risk and debt problems, further filters candidates by selecting for the profession students who bear the characteristics most like the profession of the past.

Reducing the costs of the LPC course by reducing to a minimum the core of the course would be another possibility. Similarly, encouraging, or even requiring, the modularisation of the LPC and the integration of the modules alongside the training contract might allow students to spread the economic burden of the course over a longer period of time and whilst working. Risk for students would be reduced, but reasons of finance and convenience would mean firms and course providers would need considerable persuasion.

Richard Moorhead
University of Birmingham